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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/071,599	02/08/2002	Akikazu Yoshikawa	AA-542	2691
27752	7590	02/24/2004		
THE PROCTER & GAMBLE COMPANY INTELLECTUAL PROPERTY DIVISION WINTON HILL TECHNICAL CENTER - BOX 161 6110 CENTER HILL AVENUE CINCINNATI, OH 45224			EXAMINER LAMM, MARINA	
			ART UNIT	PAPER NUMBER
			1616	8

DATE MAILED: 02/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/071,599

**Applicant(s)**

YOSHIKAWA ET AL.

**Examiner**

Marina Lamm

**Art Unit**

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 16 and 17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 18-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

Acknowledgment is made of the amendment filed 08/27/03. Claims pending are 1-23. Claims 16 and 17 have been withdrawn from consideration as directed to non-elected species. Claims 1 and 6 have been amended. Claims 21-23 are new.

#### *Claim Objections*

1. Claims 1 and 21 are objected to because of the following informalities: the word "aqueous" is misspelled. Appropriate correction is required.

#### *Claim Rejections - 35 USC § 102*

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. The rejection of Claims 1-5, 10, 11, 15, 18 and 19 under 35 U.S.C. 102(b) as being anticipated by Moore, Jr. (US 5,865,143) is maintained for the reasons of the record.
4. The rejection of Claims 1-5, 10-12, 15, 18 and 19 under 35 U.S.C. 102(b) as being anticipated by Brown et al. (US 4,331,653) is maintained for the reasons of the record.
5. The rejection of Claim 20 under 35 U.S.C. 102(b) as being anticipated by Brown et al. and evidenced by Green (US 4,806,526) is maintained for the reasons of the record.
6. Claims 1-5, 9-12, 15, 18-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Tvedten (WO 98/30236).

Tvedten teaches aqueous biological pesticide compositions containing aluminum compounds such as aluminum chloride, aluminum sulfate and aluminum nitrate. See p. 7; Claim 68. The concentration of aluminum ion in the compositions of Tvedten is about 1% w/v or less, preferably about 0.4% w/v. See p. 7. The compositions of Tvedten may contain

Art Unit: 1616

additional ingredients such as citric or lactic acid, surfactants, etc. and may be applied to various substrates, including articles of furniture by spraying. See pp. 4, 6, 8. The compositions of Tvedten are effective against dust mites, carpet beetles, fabric pests and are effective at decreasing or eliminating the incidence of allergic reactions to dust. See p. 10. The compositions of Tvedten will inherently neutralize at least 50% or 60% of allergen containing proteins because they contain the same ingredient in the same amounts as claimed in the instant invention.

Thus, Tvedten teaches each and every limitation of Claims 1-5, 9-12, 15, 18-23.

***Claim Rejections - 35 USC § 103***

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
8. The rejection of Claims 9, 13 and 14 under 35 U.S.C. 103(a) as being unpatentable over Brown et al. is maintained for the reasons of the record.
9. The rejection of Claims 6-8 under 35 U.S.C. 103(a) as being unpatentable over Brown et al. in view of Stewart (US 5,916,541) is maintained for the reasons of the record.

***Response to Arguments***

10. Applicant's arguments filed 8/27/03 have been fully considered but they are not persuasive.
11. In response to applicant's argument that neither Moore, Jr. nor Brown teaches or discloses an allergen neutralization composition for the use on household surfaces, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention

Art Unit: 1616

from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Further, the compositions of the cited prior art contain the same amount of aluminum compounds as recited in the instant claims, so that the limitation "effective amount to neutralize at least some allergens" is inherent in the art.

### *Conclusion*

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 6,025,312 discloses antibacterial, bactericidal and antiseptic composition containing ethanol,  $AlCl_3$  and water (see Example 2).

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Art Unit: 1616

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lamm whose telephone number is (571) 272-0618.

The examiner can normally be reached on Mondays, Wednesdays and Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached at (571) 272-0602.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
SHELLEY A. DODSON  
PRIMARY EXAMINER

  
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2/22/04